

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LEIF C.,	)	
	)	CASE NO. C20-5733-MAT
Plaintiff,	)	
	)	
v.	)	
	)	ORDER RE: SOCIAL SECURITY
COMMISSIONER OF SOCIAL	)	DISABILITY APPEAL
SECURITY,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff proceeds through counsel in his appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's application for Disability Insurance Benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is REVERSED and REMANDED for further administrative proceedings.

**FACTS AND PROCEDURAL HISTORY**

Plaintiff was born on XXXX, 1980.<sup>1</sup> He has an 11th-grade education and previously worked as a fisherman, concrete mason, and RV technician. (AR 197.)

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<sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 Plaintiff applied for DIB in September 2017. (AR 171-72.) That application was  
02 denied and Plaintiff timely requested a hearing. (AR 102-04, 108-17.)

03 In June 2019, ALJ Kimberly Boyce held a hearing, taking testimony from Plaintiff and  
04 a vocational expert (VE). (AR 32-63.) In August 2019, the ALJ issued a decision finding  
05 Plaintiff not disabled. (AR 15-26.) Plaintiff timely appealed. The Appeals Council denied  
06 Plaintiff's request for review in May 2020 (AR 1-6), making the ALJ's decision the final  
07 decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to  
08 this Court.

### 09 **JURISDICTION**

10 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §  
11 405(g).

### 12 **DISCUSSION**

13 The Commissioner follows a five-step sequential evaluation process for determining  
14 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it  
15 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had  
16 not engaged in substantial gainful activity since August 23, 2015, the alleged onset date. (AR  
17 17.) At step two, it must be determined whether a claimant suffers from a severe impairment.  
18 The ALJ found severe Plaintiff's degenerative disc disease, obstructive sleep apnea, obesity,  
19 depressive disorder, and anxiety disorder. (AR 17.) Step three asks whether a claimant's  
20 impairments meet or equal a listed impairment. The ALJ found that Plaintiff's impairments  
21 did not meet or equal the criteria of a listed impairment. (AR 18-19.)

22 If a claimant's impairments do not meet or equal a listing, the Commissioner must

01 assess residual functional capacity (RFC) and determine at step four whether the claimant has  
02 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
03 performing light work with additional limitations: he can never climb ladders, ropes, or  
04 scaffolds. He cannot work at unprotected heights or in proximity to hazards such as heavy  
05 machinery and dangerous moving parts. He can occasionally climb ramps and stairs, balance,  
06 stoop, kneel, crouch, and crawl. He can perform work in which concentrated exposure to  
07 pulmonary irritants or vibration is present. He can understand, remember and carry out  
08 simple, routine tasks and follow short simple instructions. He can perform work that requires  
09 little or no judgment and can perform simple duties that can be learned on the job in a short  
10 period. He can perform work that does not require interaction with the general public as an  
11 essential element of the job, but occasional incidental contact with the general public is not  
12 precluded. (AR 19.) With that assessment, the ALJ found Plaintiff unable to perform past  
13 relevant work. (AR 24.)

14 If a claimant demonstrates an inability to perform past relevant work, the burden shifts  
15 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make  
16 an adjustment to work that exists in significant levels in the national economy. With the  
17 assistance of the VE, the ALJ found Plaintiff capable of transitioning to other representative  
18 occupations, such as electrical accessories bench assembler, small products assembler, and  
19 table worker. (AR 24-25.)

20 This Court's review of the ALJ's decision is limited to whether the decision is in  
21 accordance with the law and the findings supported by substantial evidence in the record as a  
22 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means

01 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
02 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
03 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
04 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
05 F.3d 947, 954 (9th Cir. 2002).

06 Plaintiff argues the ALJ erred in (1) discounting his subjective symptom testimony, (2)  
07 assessing certain medical evidence and opinions, and (3) failing to discuss the lay evidence.  
08 The Commissioner argues that the ALJ's decision is supported by substantial evidence and  
09 should be affirmed.

#### 10 Lay evidence

11 The record contains statements from Plaintiff's former employer as well as a  
12 vocational consultant, who was apparently retained in the context of a personal injury lawsuit  
13 stemming from Plaintiff's 2011 car accident. (AR 184-88, 212-19, 292-99.) Plaintiff's  
14 mother-in-law and sister-in-law also wrote statements. (AR 281-90.) The ALJ did not  
15 discuss any of this evidence in the decision.

16 Lay witness testimony as to a claimant's symptoms or how an impairment affects  
17 ability to work is competent evidence and cannot be disregarded without comment. *Van*  
18 *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). *But see Molina v. Astrue*, 674 F.3d  
19 1104, 1115-22 (9th Cir. 2012) (describing how the failure to address lay testimony may be  
20 harmless). The ALJ can reject the testimony of lay witnesses only upon giving germane  
21 reasons. *Smolen v. Chater*, 80 F.3d 1273, 1288-89 (9th Cir. 1996).

22 Although the Commissioner contends that the ALJ's failure to discuss the lay

01 evidence is harmless, the Court cannot agree as to the statements from Plaintiff's former  
02 employer and the vocational consultant. The statements from Plaintiff's family members  
03 could arguably be said to reiterate Plaintiff's own complaints, such that the ALJ's discounting  
04 of Plaintiff's testimony would apply with equal force to these statements. *See Molina*, 674  
05 F.3d at 1120-22.

06 But the perspectives of Plaintiff's former employer and the vocational consultant are  
07 unique and offer a different view of Plaintiff's limitations, and therefore the ALJ's reasoning  
08 with respect to Plaintiff's testimony is not logically transferable to all of the lay statements.  
09 The vocational consultant, for example, addressed the impact of reaching and keyboarding  
10 limitations (apparently indicated in a medical opinion that was not before the ALJ). (*See AR*  
11 *186-87.*) Plaintiff's former employer also discussed *inter alia* limitations as to Plaintiff's  
12 ability to lift and reach, and outlined Plaintiff's symptoms in the context of a work  
13 environment. (*See AR 298-99.*) The ALJ herself noted at the hearing that Plaintiff's case was  
14 "very well documented, especially with information from your employer" (AR 62-63), which  
15 further suggests that the employer's statement constitutes probative evidence. As such, the  
16 Court finds that the ALJ harmfully erred in failing to discuss the lay evidence, and therefore  
17 remands this case to allow the ALJ to explicitly discuss the lay statements.

18 Subjective symptom testimony

19 The ALJ discounted Plaintiff's allegations because (1) the record contained many  
20 normal objective physical findings that contradict Plaintiff's allegation of disabling physical  
21 impairments, (2) the record demonstrates improvement with use of a spinal cord stimulator,  
22 (3) Plaintiff can complete his daily activities independently, and (4) his mental limitations

01 were primarily related to situational stressors (personal injury lawsuit, water well rights  
02 dispute with a neighbor) and improved with medication. (AR 20-23.) Plaintiff argues that  
03 these reasons are not clear and convincing, as required in the Ninth Circuit. *Burrell v. Colvin*,  
04 775 F.3d 1133, 1136-37 (9th Cir. 2014).

05 Plaintiff argues that the ALJ's first reason for discounting his allegations—  
06 inconsistency with the objective medical record — is not sufficiently specific because the ALJ  
07 did not link this finding to any particular allegation. Dkt. 10 at 6. This argument is not  
08 persuasive: the ALJ summarized Plaintiff's physical allegations in the section preceding her  
09 evaluation of the allegations, and the Court can discern the ALJ's link between the allegations  
10 and the objective evidence. (*See* AR 20 (listing Plaintiff's alleged sitting, standing, lifting,  
11 stooping, bending, and handling limitations).) Plaintiff also argues that this reason alone  
12 could not support the ALJ's assessment of his allegations (Dkt. 10 at 6), but, as explained  
13 above, the ALJ did not rely on this reason alone.

14 Plaintiff goes on to argue that the ALJ overlooked physical therapy records that  
15 corroborate his allegations, but Plaintiff fails to acknowledge that these physical therapy  
16 records date prior to the placement of his spinal cord stimulator, which alleviated some of  
17 Plaintiff's symptoms. (AR 428-40.) Furthermore, the physical therapist noted that Plaintiff's  
18 reports of pain do not correspond to the imaging evidence, which raised a "red flag" in the  
19 physical therapist's mind. (AR 439.) The physical therapist's notes do not reasonably  
20 contradict the evidence explicitly discussed by the ALJ, and do not necessarily corroborate  
21 Plaintiff's allegations, and therefore Plaintiff has failed to show that the ALJ mischaracterized  
22 the evidence in assessing his allegations.

01 Plaintiff also disputes whether his treatment could be fairly characterized as  
02 “conservative,” as the ALJ claimed. (AR 21.) The Court agrees that epidural steroid  
03 injections and a spinal cord stimulator may not constitute “conservative” treatment, but the  
04 ALJ cited substantial evidence showing that Plaintiff’s symptoms did improve with these  
05 treatments, particularly the spinal cord stimulator. (AR 21-22.) Plaintiff contends that even  
06 with that improvement, some limitations still remained (Dkt. 10 at 8-9), and the ALJ’s  
07 decision is not necessarily inconsistent with that contention: the ALJ’s RFC assessment limits  
08 Plaintiff to light work with additional physical restrictions. (AR 19.) Plaintiff has failed to  
09 show that the ALJ erred in finding that Plaintiff’s functioning improved with treatment, or in  
10 discounting his allegations on that basis. *See Wellington v. Berryhill*, 878 F.3d 867, 876 (9th  
11 Cir. 2017) (“[E]vidence of medical treatment successfully relieving symptoms can undermine  
12 a claim of disability.”); *Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595, 599-600 (9th  
13 Cir. 1999) (contrary to claimant’s claims of lack of improvement, physician reported  
14 symptoms improved with use of medication).

15 Plaintiff also challenges the ALJ’s finding that his allegations were undermined by his  
16 activities, when the ALJ did not point to any activities that significantly contradicted his  
17 allegations. Dkt. 10 at 9. The Court agrees that the ALJ’s finding is not well-supported on  
18 this point. (AR 22.) This error is harmless, however, in light of the ALJ’s other independent,  
19 valid reasons to discount Plaintiff’s allegations. *See Carmickle v. Comm’r of Social Sec.*  
20 *Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008). Accordingly, the Court affirms the ALJ’s  
21 assessment of Plaintiff’s allegations.

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Medical evidence

Plaintiff challenges the ALJ's assessment of the medical opinion evidence. The ALJ explained that he found one of the State agency opinions to be somewhat persuasive and others to be persuasive, and found a treating doctor's September 2019 letter to be unpersuasive. (AR 23-24.) Specifically, the ALJ found the State agency opinions persuasive to the extent that they were consistent with the medical record, and found the treating doctor's letter unpersuasive because it was inconsistent with the medical record. (*Id.*)

Because Plaintiff applied for benefits after March 27, 2017, new regulations apply to the ALJ's evaluation of medical opinion evidence. Under the regulations, an ALJ "will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s)[.]" 20 C.F.R. §§ 404.1520c(a), 416.920c(a).<sup>2</sup> The ALJ must articulate and explain the persuasiveness of an opinion or prior finding based on "supportability" and "consistency," the two most important factors in the evaluation. *Id.* at (a), (b)(1)-(2). The "more relevant the objective medical evidence and supporting explanations presented" and the "more consistent" with evidence from other sources, the more persuasive a medical opinion or prior finding. *Id.* at (c)(1)-(2). The ALJ may but is not required to explain how other factors were considered, as appropriate, including relationship with the claimant (length, purpose, and extent of treatment relationship; frequency of examination); whether there is an examining relationship; specialization; and

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<sup>2</sup> "A prior administrative medical finding is a finding, other than the ultimate determination about [disability], about a medical issue made by our Federal and State agency medical and psychological consultants at a prior level of review . . . in [a] claim based on their review of the evidence in your case record[.]" 20 C.F.R. §§ 404.1513(a)(5), 416.913(a)(5).



01 other factors, such as familiarity with other evidence in the claim file or understanding of the  
02 Social Security disability program's policies and evidentiary requirements. *Id.* at (b)(2),  
03 (c)(3)-(5). *But see id.* at (b)(3) (where finding two or more opinions/findings about same  
04 issue equally supported and consistent with the record, but not exactly the same, ALJ will  
05 articulate how other factors were considered). Where a single medical source provides  
06 multiple opinions or findings, the ALJ conducts a single analysis and need not articulate how  
07 each opinion or finding is considered individually. *Id.* at (b)(1).

08 In this case, Plaintiff argues that the ALJ should have found the State agency opinions  
09 to be unpersuasive because they were unexplained, but this argument is not well-supported.  
10 The State agency consultants summarized the medical evidence considered, and identified the  
11 limitations that they found to be established by that evidence. (*See* AR 76-87, 89-101.) These  
12 opinions summarize more supporting evidence than the treating doctor's letter, which Plaintiff  
13 urges the Court to find to be better explained. (*See* AR 826.) Furthermore, in arguing that the  
14 record actually corroborates the treating doctor's opinion, Plaintiff reiterates the same  
15 arguments considered and rejected by the Court with respect to Plaintiff's allegations. *See*  
16 Dkt. 10 at 10-11. Plaintiff's alternate interpretation of the record is not sufficient to establish  
17 error in the ALJ's decision. *See Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997)  
18 ("[T]he key question is not whether there is substantial evidence that could support a finding  
19 of disability, but whether there is substantial evidence to support the Commissioner's actual  
20 finding that claimant is not disabled.").

21 Plaintiff has failed to show that the ALJ's findings are not supported by substantial  
22 evidence or are unreasonable, and thus has failed to show that the ALJ erred in assessing the

01 medical opinions.

02 **CONCLUSION**

03 For the reasons set forth above, this matter is REVERSED and REMANDED for  
04 further administrative proceedings. On remand, the ALJ shall consider and address the lay  
05 statements, and reconsider any other portions of the decision as necessary.

06 DATED this 12th day of February, 2021.

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08 Mary Alice Theiler  
09 United States Magistrate Judge  
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